

## REMARKS

Claims 2 - 11, 13 - 23, 25 - 31, and 33 - 41 are currently pending in the instant application. Applicant acknowledges the allowance of claims 13 - 23, 25 - 31, and 33 - 41. Claims 2 - 6, and 9 are rejected under 35 U.S.C. §102(b) and claim 10 is rejected under 35 U.S.C. §103(a). Claims 7, 8, and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form. Reconsideration and allowance of claims 2 - 11 in view of the following remarks is respectfully requested.

Claims 2 - 6, and 9 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,542,128 to Lomas ("Lomas").

Claim 2 recites a headpiece which comprises contoured panels, a rear joining piece, and a front joining piece; "wherein each of the contoured panels extend from the rear joining piece to the front joining piece".

It is respectfully submitted that Lomas fails to teach a front joining piece, a rear joining piece, and/or contoured panels extending from a rear joining piece to a front joining piece. In contrast, Lomas teaches a hood formed by two crescent shaped halves (9, 10) which are sewn together such that the top portions of the crescent shaped halves (9, 10) form an apex (13) and the bottom portions of the crescent shape halves (9, 10) form a wider back piece (16). (Column 2, line 43 to column 3, line 7.) Referring to Figures 5 and 6, it can clearly be seen that the crescent shaped halves (9, 10) are directly joined together at their convex edge (12) and not joined to a front joining piece and/or to a rear joining piece. Because Lomas fails to teach either a front joining piece or a rear joining piece, it follows that Lomas also fails to teach that crescent shaped halves (9, 10) extend from a rear joining piece to a front joining piece.

The Examiner refers to connection means (26, 27) in the embodiment illustrated in Figure 5 as teaching a "rear joining piece". It is respectfully submitted that connection means (26, 27) is not a "rear joining piece" in the same sense as the rear joining piece of the claimed invention. As seen in Figure 5 of Lomas, the two crescent shaped halves (9, 10) are joined together at their convex edges (12). However, a portion of the convex edges (12) are not joined together, thus

forming a medial slit (25). As seen in Figure 5, a portion of connection means (26, 27) extends from crescent shape half (11) and another portion of connection means (26, 27) extends from crescent shape half (10) at medial split (25). By coupling both portions of connection means (26, 27) together, the width of the medial split (25) can be adjusted. According to Lomas, connection means (26, 27) is employed merely to help conform the hood to the shape of the wearer's head. (Column 2, line 64 - column 3, line 1.) Lomas fails to teach that crescent shaped halves (9, 10) extend from connection means (26, 27) to a front joining piece.

For the reasons discussed above, it is believed that claim 2 is allowable. It is respectfully requested that the rejection of claim 2 pursuant to 35 U.S.C. §102(b) in view of Lomas be withdrawn.

Claims 3 - 6, and 9 depend from allowable claim 2. Thus for the same reasons discussed above in conjunction with claim 2, it is respectfully requested that the rejection of claims 3 - 6, and 9 pursuant to 35 U.S.C. §102(b) in view of Lomas be withdrawn.

Claim 10 is rejected under 35 U.S.C. §103(a) as being obvious in view of Lomas. Claim 10 depends from allowable claim 2. Thus for the same reasons discussed above in conjunction with claim 2, it is believed that claim 10 is allowable.

Additionally and/or alternatively, claim 10 recites "wherein the headpiece is formed of an elastomeric material". The Examiner states that it would have been obvious to one having ordinary skill in the art to modify Lomas's invention by providing a headpiece being formed of an elastomeric material. It is respectfully submitted that Lomas directly teaches away from using an elastomeric material. Specifically, Lomas states:

The hood is preferably made from non-elastic fabric (e.g. cotton) and the fabric is cut and the hood assembled so that the warp threads are positioned to be parallel to the axes of the arms 17 and 18 and the weft threads are normal to the axes of the warp threads. By this arrangement, the hood is practically unstretchable which is an important factor in the reduction of air leakage from the mask.

(Column 3, lines 3 - 10.) Because Lomas specifically teaches using a non-elastic fabric, it would not have been obvious to one having ordinary skill in the art to modify Lomas's invention by

providing a headpiece being formed of an elastomeric material. In fact, using an elastomeric material would increase the air leakage from the mask and render Lomas's invention unfit for its intended purpose.

For these reasons, it is believe that claim 10 is allowable. Accordingly, it is respectfully requested that the rejection of claim 10 pursuant to 35 U.S.C. §103(a) in view of Lomas be withdrawn.

Claims 7, 8, and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form. Claims 7, 8, and 11 depend from allowable claim 2. Thus for the same reasons discussed above in conjunction with claim 2, it is respectfully requested that the objection of claims 7, 8, and 11 be withdrawn.

It is believed that all outstanding objections and rejections have been addressed. It is respectfully submitted that the present application is in condition for allowance and a Notice to that effect is earnestly solicited. If the Examiner is of the opinion that certain aspects of the application are not in condition for allowance, it is respectfully requested that an Advisory Action be mailed immediately and/or that the Examiner contact the applicant at the number listed below.

Respectfully submitted,

RESPIRONICS, INC.  
1010 Murry Ridge Lane  
Murrysville, PA 15668-8525

By Richard J. Coldren  
Richard J. Coldren  
Reg. No.: 44,084  
Tel. No.: (724) 387-4455  
Fax No.: (724) 387-5021